DEPARTMENT OF STATE REVENUE

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Letter of Findings: 02-20210018; 01-20210008; 01-20210009; 01-20210010; 01-20210011; 01-20210012; 01-20210013; 01-20210014; 01-20210015; 01-20210016; 01-20210017; 01-20210018
Individual and Corporate Indiana Income Tax
For the Years 2016 and 2017

HOLDING

The Department rejected Electrical Contractor's and its Shareholders' argument that they were entitled to claim research expense credits; the Department disagreed with Contractor's and Shareholders' argument that they had met their burden of establishing that they were conducting qualified research activities, nor had they established the extent and nature of those activities.

ISSUE

I. Indiana Individual and Corporate Income Tax - Qualified Research Expense Projects and Documentation.

Authority: IC § 6-3.1-4-1; IC § 6-8.1-5-1; IC § 6-8.1-5-4; *IDOPCP, Inc. v. Comm'r*, 503 U.S. 79 (1992); *New Colonial Ice Co. v. Helvering*, 292 US. 435 (1934); *United States v. McFerrin*, 570 F.3d 672 (5th Cir. 2009); *Stinson Estate v. United States*, 214 F.3d 846 (7th Cir. 2000); *Conklin v. Town of Cambridge City*, 58 Ind. 130 (1877); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289 (Ind. Tax Ct. 2007); *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96 (Ind. Ct. App. 1974); *Union Carbide Corp. and Subs v. Comm'r*, T.C. Memo 2009-50 (U.S. Tax Ct. 2009); *Suder v. Commissioner*, T.C. Memo 2014-201 (U.S. Tax Ct.); I.R.C. § 41; Treas. Reg. § 1.41-4; Treas. Reg. § 1.6001-1.

Taxpayers argue that their company conducted qualified, experimental research activities, that they can adequately document the wage expenses related to construction and design projects, and that they are therefore entitled to claim the benefit of the flow-through credits associated with their company's qualifying research activities.

STATEMENT OF FACTS

Taxpayers here consist first of an Indiana company in the business of providing its customers electric contracting and on-demand electrical support services. The business elected to be taxed as an S-Corporation. Along with the business, "Taxpayers" also includes the business's individual shareholders.

For simplicity's sake, this Letter of Findings will hereinafter designate the business and the individual shareholders as "Taxpayer" because, although it was the business which originally claimed the now disputed credit, those credits "flowed through" to the individual shareholders.

The Indiana Department of Revenue ("Department") conducted an audit review of Taxpayer's tax returns and business records. During an initial review of the 2017 return, the Department found that Taxpayer engaged a consulting firm ("Consultant") to review its 2016 and 2017 business activities and prepare a "research and expense study." In the research credit study report, the Consultant concluded that Taxpayer conducted qualified research activities ("QREs") entitling it to claim Indiana labor research expense tax credits ("RECs" or "REC") which in turn passed on to the shareholders and reduced their own income tax liability.

The shareholders reported and claimed the "flow-through" credits on their individual income tax returns. Taxpayer claimed that it incurred approximately $9,000,000 in qualified research expenses entitling it to claim approximately $460,000 in RECs for the years 2016 and 2017.

The Department's audit reviewed Taxpayer's tax returns, business records, and manufacturing records. The audit resulted in a decision denying Taxpayer's originally claimed research credits along with the credits which had

"flowed through" and been claimed on the shareholders' individual income tax returns. On the ground that they were not entitled to the flow-through credits, the Department assessed the individual shareholders additional individual income tax because Taxpayer had not established it was entitled to claim the original credits.

Taxpayer disagreed with the Department's decision disallowing the credits and both the business's and the shareholders' assessments. Taxpayer submitted a protest to that effect. An administrative hearing was conducted during which Taxpayer's representatives explained the basis for the protest. This Letter of Findings results.

I. Individual Adjusted Gross Income Tax - Qualified Research Expense Projects and Documentation.

DISCUSSION

The issue is whether Taxpayer established that it conducted qualifying research activities and whether it can now document the extent to which Taxpayer conducted those qualifying activities.

A. Department's Audit Examination.

1. Qualifying Research Projects.

During the years 2016 and 2017, Taxpayer claimed approximately $9,000,000 in QREs entitling it to approximately $460,000 in RECs. These "qualifying expenses" stemmed entirely from wage expenses.

The Department's audit concluded that the company's activities did not "overcome the 4-part test" required under I.R.C. § 41(d) which defines "qualified research" as research:

> 1. With respect to which expenditures may be treated as expenses under section 174[;]
> 2. Which is undertaken for the purposes of *discovering information* and which is technological in nature [also known as the Discovery Test[;]
> 3. The application of which is intended to be useful in the development of a *new or improved business component* of the taxpayer; and
> 4. Substantially all of the activities which constitute elements of a process of experimentation for a [qualifying purpose]. (*Emphasis added*).

I.R.C. § 41(d) sets out this four-pronged test for verifying qualified research activities. First, the research must have qualified as a business deduction under I.R.C. § 174. I.R.C. § 41(d)(1)(A). Second, the research must be undertaken to discover information "which is technological in nature." I.R.C. § 41(d)(1)(B)(i). Third, the taxpayer must intend to use the information to develop a new or improved business component. I.R.C. § 41(d)(1)(B)(ii). Finally, the taxpayer must pursue a "process of experimentation" during substantially all of the research. I.R.C. § 41(d)(1)(C).

In addition to meeting the four-pronged test requirements, the activities cited by the claimant must not be activities excluded under I.R.C. § 41(d)(4).

(a) Section 174 Business Deduction Test.

The audit determined that none of Taxpayer's project descriptions qualified for the credit because the "described functions are specifically excludable or limited under the provisions of Section 174 of the Internal Revenue Code." The audit report explains:

> [These] functions are the result of the application of common, commercially available, proven and accepted electric engineering principles or the adaptive variations of same through the use of employee experience and accumulated work site expertise. The taxpayer is simply doing what is required to be done in the normal practice of the electric engineering/construction industry. These costs are ordinary and necessary business expenses . . . .

The audit further explained that activities in which personnel complete a task based upon their experience, education and credentials are non-qualifying activities for research and expense purposes. Under those circumstances, the task is simply being performed in an environment in which "scientific knowledge" is available and accepted.

On this issue, the audit concluded that "[a]ny activity that is not uncertain in method and capability does not

qualify for the research expense credit per Treasury Regulation 1.74-2(a)(1)."

(b) Discovering Technological Information and Addressing Uncertainty.

As to the second of the four tests, the Department's audit did not agree that Taxpayer's activities led to the discovery of information or technology which expanded upon and added to the common knowledge of other electrical contractors. According to the audit report, in order to qualify for the REC, "[T]he taxpayer must be discovering information eliminate uncertainty and uncertainty exists only if the information available to the taxpayer does not establish the capability or method for developing or improving the business component or the appropriate design of the business component."

As authority for its position, the Department cited to Treas. Reg. § 1.41-4(a)(3)(i) which states:

> For purposes of section 41(d) and this section, research must be undertaken for the purpose of *discovering information* that is technological in nature. Research is undertaken for the purpose of discovering information if it is intended to *eliminate uncertainty* concerning the development or improvement of a business component. Uncertainty exists if the information available to the taxpayer does not establish the capability or method for developing or improving the business component, or the appropriate design of the business component. (*Emphasis added*).

The audit noted that Taxpayer had been in the electrical/contracting business for many years and had employees who were well educated and well experienced in the electrical system design and construction business. The audit explained:

> Even though the taxpayer may not know every detail of the final design when it signs the contract with the customer, both the customer and the taxpayer [have] the education/experience to prepare the appropriate design based on the customer's requirements, government regulations, and site conditions when they entered into the contract.

(c) New or Improved Business Component.

As to the third of the four tests, the audit stated that every QRE expense claimant must "tie the qualified research expenses it is claiming for the credit to the relevant business component." In the case of RECs, Treas. Reg. § 1.41-4(b)(d) defines "business component" as "the product, process, computer software, technique, formula, or invention to be held for sale, lease, or license, or used by the taxpayer in a trade or business of the taxpayer."

The audit found that Taxpayer was unable to "tie" any of the claimed expenses to the development of a specific component. Taxpayer admitted that it did utilize a project account system and "could not tie the qualified research expense to the relevant business component."

The audit found that Taxpayer failed to provide any documentation to substantiate that the wage expenditures contributed to the development of a new or improved business component, but that Taxpayer was simply "duplicating/adapting existing business components and process the [T]axpayer and other companies in the [T]axpayer's industry employ on a regular basis."

The Department's audit rejected Taxpayer's argument that "the whole design/build construction project [constitutes] the business component." Furthermore, the audit cited to Treas. Reg. § 1.41-4(d)(4)(B) for the rule that "qualified research" does not include "[a]ny research related to the adaptation of an existing business component to a particular customer's requirement or need." In other words, Taxpayer's adaption of any existing business component to meet a particular customer requirement is not qualified research.

(d) Undertaking a Process of Experimentation.

Finally, as to the fourth test, the audit relied on Treas. Reg. § 1.41-4(a)(4) which states:

> For purposes of section 41(d) and this section, a process of experimentation is a process designed to evaluate one or more alternatives to achieve a result where the capability or the method of achieving that result, or the appropriate design of that result, is uncertain as of the beginning of the taxpayer's research activities. A process of experimentation must fundamentally rely on the principles of the physical or biological sciences, engineering, or computer science and involves the identification of uncertainty concerning the development or improvement of a business component, the identification of one or more alternatives

> intended to eliminate that uncertainty, and the identification and the conduct of a process of evaluating the alternatives (through, for example, modeling, simulation, or a systematic trial and error methodology). A process of experimentation must be an evaluative process and generally should be capable of evaluating more than one alternative. A taxpayer may undertake a process of experimentation if there is no uncertainty concerning the taxpayer's capability or method of achieving the desired result so long as the appropriate design of the desired result is uncertain as of the beginning of the taxpayer's research activities. Uncertainty concerning the development or improvement of the business component (e.g., its appropriate design) does not establish that all activities undertaken to achieve that new or improved business component constitute a process of experimentation.

The audit also cited to the preamble to Treas. Reg. § 1.41-4 which, according to the audit's position, contradicted Taxpayer's own argument that it engaged in a process of experimentation.

> [M]erely demonstrating that uncertainty has been eliminated (e.g., the achievement of the appropriate design of a business component when such design was uncertain as of the beginning of a taxpayer's activities) is insufficient to satisfy the process of experimentation requirement. A taxpayer bears the burden of demonstrating that its research activities additionally satisfy the process of experimentation standard.

The audit found that Taxpayer failed to meet that burden. As stated in the audit report, "[T]axpayer's capability and method for developing or improving the business component are very certain." Instead, "[T]axpayer has been in the business for many years and has several employees with education/experience to do the job."

The audit concluded that the experimentation standard could not be met where the capability and method of achieving the desired business component and appropriate design of that new or improved component are readily apparent and applicable at the outset of a taxpayer's research activities. In other words, under Treas. Reg. § 1.41-4(a)(5) (T.D. 9104), resolving "uncertainties" apparent at the outset of a Taxpayer electrical project was insufficient to meet the experimentation standard.

2. Documenting and Substantiating the Credit.

The Department's audit faulted Taxpayer because it was unable to provide "time tracking of employee hours for each sampled project." When asked for those records, Taxpayer explained that "it did not keep track of each employee's work hours on each project." Taxpayer claimed the REC wage expenses were based on each employee's job description and job titles.

The audit did not agree that job descriptions were sufficient to verify Taxpayer's claim to the credits. Taxpayer proposed "conducting employee interviews and provided, at the request of [the] auditor, the interview notes from the REC study . . . ."

The Department's audit declined to conduct additional employee interviews finding that interviews would not provide any additional information over and above that which was already provided.

The Department's audit instead cited to Treas. Reg. 1.41-2(d)(1) which provides as follows:

> A taxpayer claiming a credit under section 41 must retain records in sufficiently usable form and detail to substantiate that the expenditures claimed are eligible for the credit. For the rules governing record retention, see § 1.6001-1.

In turn, Treas. Reg. § 1.6001-1(a) - referred to above - provides:

> Any person required to file a return of information with respect to income shall keep such permanent books of accounts or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown in any return of such tax or information.

The audit report also pointed out to Indiana's own general record keeping requirement.

> Every person subject to a listed tax must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax by reviewing those books and records. The records referred to in this subsection include all source documents necessary to determine the tax, including invoices, register tapes, receipts and canceled checks. IC § 6-8.1-5-4(a).

Even assuming that Taxpayer established that it was engaged in qualifying research activities, the Department's audit found that Taxpayer failed to adequately document the time and labor expenses which formed a substantial basis for the claimed research credits.

The audit report summarized the standard under which it evaluated Taxpayer's efforts to verify the labor expenses stating that "[t]he common theme in all of the legal authorities . . . is that the [T]axpayer must keep records to substantiate the amounts reported on returns filed." Taxpayer failed to provide "contemporaneous documentation to support the employee research participation percentages that it used to calculate the qualified research expenses."

Under any of these standards cited above, the audit concluded that "[T]axpayer ha[d] not provided records verifying that the amount credits claimed were qualified expenses nor did the taxpayer provide documentation verify that its research activities were qualified research pursuant to I.R.C. § 41 and IC § 6-3.1-4-4."

A. Taxpayer's Response.

1. Qualifying Research Projects.

Taxpayer argues that the Department misapplied the relevant legal standards in determining what does and what does not constitute QREs. Moreover, Taxpayer states that its method of quantifying the claimed labor expenses "falls squarely in line with the wealth of authority on the matter."

At the outset, Taxpayer states that each time it was hired to complete an electrical design or construction project, it was - by definition - engaged in the development of a "business component" and that labor expenses incurred in resolution of uncertainties in the design or construction project qualify for the exemption. In Taxpayer's own words:

> Here for every project at issue, [Taxpayer] was tasked with developing and/or installing electrical designs, each of which are "products" in accordance with the [] law and guidance.

Taxpayer further explains, "[R]outine uncertainties that could be encountered on every unique project a taxpayer undertakes are sufficient to satisfy Section 174's uncertainty requirement."

Taxpayer disagrees with the Department's conclusion that it does not engage in QREs. Instead, it is Taxpayer's contention that its "business components were all unique and required independent analysis to develop the appropriate design of same." In support of this contention, Taxpayer cites to *Union Carbide Corp. and Subs v. Comm'r*, T.C. Memo 2009-50 at *197-98 (U.S. Tax Ct. 2009) and *Suder v. Commissioner*, T.C. Memo 2014-201 at *25 (U.S. Tax Ct.) for the proposition that costs attributable to "discussing ideas for new products," "researching new products and features," "building prototypes," and "repairing bugs and defects in prototypes" qualify for the REC because each represents a process of a taxpayer's experimentation.

Taxpayer maintains that it is "irrefutable" that its efforts "to develop the new and improved electrical systems at issue, [it] relied on hard sciences such as physics and principles of engineering to evaluate various designs to determine the resistance and energy efficiency for the proper orientation for the systems within [each project]." As such, Taxpayer concludes that its reliance on these hard sciences meets the "discovering technological information" test.

Taxpayer cites to various electrical design or construction projects on which it based its claim to the RECs.

For example, Taxpayer undertook a project to develop a "product" for a college campus facility. The project included updates to the facility's electrical system:

> [T]he new electrical upgrades consisted of routing switch gears and various high voltage equipment. This new and improved system possessed numerous technological benefits related to quality and reliability. For example, the upgraded switch gears provided for higher quality power distribution. Further the high voltage equipment provided for a greatly increased reliability related to controlling higher power flows.

Taxpayer explains that the upgrades to this campus facility raised "numerous technological uncertainties" including:

- The appropriate design of the electrical system upgrades to meet project requirements for quality and

reliability;
• The appropriate design of the switch gear box layout to overcome flooding concerns;
• The capability of [Taxpayer] to implement a design in a flooded basement area.

In addressing these uncertainties, Taxpayer states that it engaged in "an initial and systematic evaluation of alternative," a "systematic trial and error process through the use of computer modeling," and initiated an "iterative design process during which [Taxpayer] evaluated the modeled designs based on their effectiveness of power distribution, layout, functionality, electrical reliability, and overall functionality."

In the case of the campus facility upgrade, Taxpayer eventually resolved the uncertainties as follows: "[Taxpayer] upgraded the high voltage equipment and switch gear box to a 'looped' design instead of an actuated design. This looped design provided for quicker power distribution and [could] be located within the higher part of the basement."

2. QRE Calculations.

Taxpayer disagrees with the audit's conclusion that REC claimants are subject to "stringent and detailed" substantiation requirements. As did the audit, Taxpayer cites to Treas. Reg. § 1.6001-1(a) which provides:

> Any person required to file a return of information with respect to income shall keep such permanent books of accounts or records, including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown in any return of such tax or information.

Taxpayer relies on Treas. Reg. § 1.6001-1(a) as supporting its position and that REC claimants may not be subjected to "hyper-granular information or contemporaneous" record keeping requirements. Instead, Taxpayer maintains that such requirements impose an unnecessary and unwarranted burden on a taxpayer attempting to claim the RECs. Taxpayer admits that it did not track and document the time its employees devoted to qualifying activities; however, Taxpayer maintains that time-tracking is neither possible nor practical as stated in the protest letter.

> For every employee who enters time into the system would need to know precisely what qualified activity is. As even janitors and secretaries can perform qualified services, imposing a requirement that every employee at the company contemporaneously record their qualified time in order to properly substantiate a research credit would require so much time, training, and expense that it would quickly outweigh any benefit that might be obtained from claiming the research credit.

Taxpayer believes that its "combination of credible testimony and contemporaneous written records is more than what the U.S. Tax Court has held to be sufficient to substantiate a research credit." Under Treas. Reg. § 1.6001-1(a), Taxpayer concludes that its oral testimony and estimations are more than "sufficient to establish the amount of gross income, deductions, credits, or other matters . . . ."

B. Burden of Proof and Analysis.

1. Proving that Taxpayer is Entitled to the Credit.

Tax assessments are *prima facie* evidence that the Department's assessment of tax is presumed correct; the taxpayer bears the burden of proving that the assessment is incorrect. IC § 6-8.1-5-1(c); *Lafayette Square Amoco, Inc. v. Indiana Dep't of State Revenue*, 867 N.E.2d 289, 292 (Ind. Tax Ct. 2007).

IC § 6-3.1-4-1 provides that, "'Research expense tax credit' means a credit provided under this chapter against any tax otherwise due and payable under IC 6-3." Similar to deductions, exemptions, and exclusions, tax credits - such as RECs - "are matters of legislative grace." *Stinson Estate v. United States*, 214 F.3d 846, 848 (7th Cir. 2000).

The taxpayer who claims the tax credit is required to retain records necessary to substantiate a claimed credit. Indiana and federal law require that a taxpayer maintain and produce contemporaneous records sufficient to verify those credits. *See* Treas. Reg. § 1.41-4(d). (*See also* IC § 6-8.1-5-4(a) which requires that taxpayers *keep* records). Where such a credit is claimed "the party claiming the same must show a case, by sufficient evidence, which is clearly within the exact letter of the law." *Indiana Dep't. of State Revenue, Sales Tax Division v. RCA Corp.*, 310 N.E.2d 96, 100-01 (Ind. Ct. App. 1974) (citing *Conklin v. Town of Cambridge City*, 58 Ind. 130, 133 (1877)).

Citing *Stinson Estate*, the circuit court in *United States v. McFerrin* summarized that "[t]ax credits are a matter of legislative grace, are only allowed as clearly provided for by statute, and are narrowly construed." *United States v. McFerrin*, 570 F.3d 672, 675 (5th Cir. 2009). *See also New Colonial Ice Co. v. Helvering*, 292 US. 435, 440 (1934) ("Whether and to what extent deductions shall be allowed depends upon legislative grace; and only as there is clear provision therefor can any particular deduction be allowed.")

Taxpayer takes a very generous approach to what does and what does not constitute a qualifying activity under I.R.C. § 1.41-4. However, the Department disputes whether the standard is met by discussing alternatives, "holistically" resolving uncertainties, or that an entire construction project necessarily constitutes a "business component." The Department finds it unnecessary to evaluate whether Taxpayer's projects meet each of the I.R.C. § 41(d)(1) four distinct tests concluding that, in this regard, the audit report stands on its own and because the disputed credit issues are resolved by addressing the documentation issue.

This LOF acknowledges Taxpayer's obvious sophistication and its ability to successfully complete complicated and oversized design and construction projects. Without minimizing Taxpayer's obvious experience, sophistication, and history and without conceding Taxpayer's arguments as to whether these projects constitute "qualified research," this Letter of Findings addresses the documentation issue.

2. Analysis and Conclusions.

Setting aside the issues as to whether Taxpayer was engaged in qualified research, Taxpayer disagreed with the audit's finding that it failed to adequately document its employees' specific activities and wages attributable to those projects. Taxpayer does not argue that it maintained a system of employee time tracking in order to quantify the research expenses. Instead, Taxpayer relied on employee job titles and employee job descriptions which - the audit noted - resulted in a "detailed explanation of the calculation."

Taxpayer relied on the job titles and job descriptions in concluding that the Taxpayer paid its employees approximately $9,000,000 to research and develop methodologies necessary to satisfy their customers' requirements.

At the outset, the Department rejects Taxpayer's argument that the Department is precluded from demanding specific, contemporaneous documentation and that "documentation is not necessary to prove taxpayer engaged in a particular activity in the tax year(s) at issue." Instead, the Department finds the law on this issue clear.

Treas. Reg. § 1.41-4(d) (T.D. 9104) states the record keeping requirements as follows:

> Recordkeeping for the research credit. A taxpayer claiming a credit under section 41 *must retain records in sufficiently usable form* and detail to substantiate that the expenditures claimed are eligible for the credit. For the rules governing record retention, *See* § 1.6001-1 (*Emphasis added*).

Again, as noted above, Indiana imposes its own record keeping requirement at IC § 6-8.1-5-4(a). The statute requires that each taxpayer "must keep books and records so that the department can determine the amount, if any, of the person's liability for that tax . . ." and requires that the taxpayer keep and maintain "all source documents necessary to determine the tax . . . ."

The Department rejects Taxpayer's argument that it may substantiate and claim the credits "when taxpayers have no documentation of expenses at all." The Department finds that the argument grossly oversimplifies the relevant regulatory requirement and statutory requirements. Instead, it is Taxpayer's statutory obligation to prepare, keep, retain, maintain and produce to the Department contemporaneous records sufficient to verify the credits which it claims pursuant to IC § 6-3.1-4-1 and IC § 6-8.1-5-4. This is especially true in the case of the RECs for which the I.R.C. imposes stringent and detailed parameters and which - if Taxpayer seeks to obtain the benefit of those credits - Taxpayer is required to meet. Treas. Reg. § 1.41-4(d) requires that "any person required to file a return of information with respect to income, shall keep such permanent books of account or records including inventories, as are sufficient to establish the amount of gross income, deductions, credits, or other matters required to be shown by such person in any return of such tax or information." Treas. Reg. 6002-1.

Indiana case law speaks in general to the issue of the standard required to establish one's entitlement to credits such as that sought by Taxpayer. "[A]n income tax deduction is a matter of legislative grace and that the burden of clearly showing the right to the claimed deduction is on the taxpayer." *IDOPCP, Inc. v. Comm'r*, 503 U.S. 79, 84 (1992). Moreover, where such a credit is claimed, "the party claiming the same must show a case, by sufficient

evidence, which is clearly within the *exact letter of the law*." *RCA Corp.*, 310 N.E.2d at 100-01. (*Emphasis added*). Thus, every taxpayer's claim against any tax must be supported by records necessary to substantiate the claimed credits and those records are required to be "kept" and "retained" "before or during the early stages of the research project."

The Department notes that Taxpayer is apparently addressing its purported entitlement to REC as a philosophical, equitable, or theoretical issue; it is not. Qualifying for the REC is more than simply a tax and calculation issue, and the Department is unaware of instances in which tax issues are resolved by means of job titles, estimates, surveys, or employee interviews.

In this case, Taxpayer asks that the Department broadly interpret the REC record keeping requirements to encompass - as explained in the audit report - estimated wage allocations for employees who spent time resolving uncertainties presented at the outset of electrical design or construction projects. What Taxpayer here seeks is a form of "summary judgment" in which the Department administratively overturns the audit's finding that the Taxpayer did not provide records to clearly substantiate the amounts of credits reported on its returns and did not provide contemporaneous documentation to support the employee research participation percentages that Taxpayer used to calculate the qualified research expenses. Even if the Department were to agree - and it does not - that Taxpayer likely conducted qualifying research, the Department is unable to agree that there is sufficient quantifiable and verifiable information to allow the credits in the amount originally requested and as here protested.

The Department concludes that Taxpayer has not met the record keeping requirements set out in Treas. Reg. § 1.41-4(d), Treas. Reg. 6001-1, and IC § 6-8.1-5-4(a). Without substantial documentation, it is not possible to conclusively determine that Taxpayer spent $9,000,000 or $9 in qualifying activities.

The Department is unable to agree that Taxpayer presented documentation of qualifying activities which clearly and plainly established that it was entitled to the $460,000 in credits originally claimed. The Department is also unable to agree that Taxpayer met its burden under IC § 6-8.1-5-1(c) of establishing that the assessments were "wrong" and its claim to income tax credits was established with "sufficient evidence" which was "clearly within the exact letter of the law." *RCA Corp*., 310 N.E.2d at 100-01.

FINDING

Taxpayer's protest is respectfully denied.

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An html version of this document.